

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

TERRY KENNINGTON,  
Plaintiff,

vs.

INTERNAL REVENUE SERVICE, et al.,  
Defendants.

ORDER  
AND  
MEMORANDUM DECISION

Case No. 1:10-CV-9-TC

This matter comes before the court on a motion to amend the complaint. *Pro se* plaintiff Terry Kennington seeks to substitute the U.S. Department of Treasury and Timothy Geithner, Secretary of the Treasury, for the currently named defendants (the Internal Revenue Service and others). Mr. Kennington, formerly an employee of the Internal Revenue Service, asserts employment discrimination and retaliation claims under Title VII of the Civil Rights Act of 1964. The federal defendants contend that allowing Mr. Kennington to file the proposed amended complaint would be futile because the court lacks jurisdiction over the claims: i.e., Mr. Kennington has not exhausted his administrative remedies, which is a jurisdictional prerequisite to deciding the discrimination claims on the merits. The court agrees with the federal defendants. Accordingly, Mr. Kennington's motion to amend his complaint is DENIED and the case is DISMISSED WITHOUT PREJUDICE.

**ANALYSIS**

In the Tenth Circuit, exhaustion of administrative remedies is a jurisdictional prerequisite

to bringing Title VII claims in federal court. Jones v. Runyon, 91 F.3d 1398, 1399 (10th Cir. 1996). A federal employee's failure to fully exhaust administrative remedies through the Equal Employment Opportunity Commission (EEOC) deprives this court of subject matter jurisdiction. Khadir v. Aspin, 1 F.3d 968, 971 (10th Cir. 1993).

Mr. Kennington has not exhausted his administrative remedies because his administrative claims are still pending before the EEOC. Accordingly, it would be futile to allow Mr. Kennington to amend complaint to bring a case over which this court has no jurisdiction.

### **ORDER**

For the foregoing reasons, Plaintiff Terry Kennington's Motion to Amend/Correct Complaint (Docket No. 20) is DENIED. The court hereby orders that the case is DISMISSED WITHOUT PREJUDICE and directs the Clerk of the Court to close the case.

DATED this 27th day of August, 2010.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
Chief Judge